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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

A.J. OLIVER,

Plaintiff,

v.

SILVER STRAND PLAZA, LLC.; REMARK
CORPORATION,

Defendants.

CASE NO.: 07 CV2141 H NLS

ANSWER TO PLAINTIFF's FIRST
AMENDED COMPLAINT

Defendant Silver Strand Plaza, LLC ("Defendant") for itself and for no one else,
respectfully answers Plaintiff's First Amended Complaint (referred to herein as "Complaint") as
follows:

I.

SUMMARY

1. Defendant has no information or belief regarding the allegations of Paragraph 1 of
the Complaint, with the exception of store location, and basing its denial on that ground, denies each
and every allegation of paragraph 1.

2. Defendant has no information or belief regarding the allegations of Paragraph 2 of
the Complaint and basing its denial on that ground, denies each and every allegation of paragraph

2.

II.

JURISDICTION

3. Defendant does not object to the allegations of jurisdiction. Except as to that, Defendant has no information or belief regarding the remaining allegations of Paragraph 3 of the Complaint, and basing its denial on that ground, denies each and every allegation of paragraph 3.

4. Defendant does not object to the allegations of jurisdiction. Except as to that, Defendant has no information or belief regarding the remaining allegations of Paragraph 4 of the Complaint, and basing its denial on that ground, denies each and every allegation of paragraph 4.

5. Defendant has no information or belief regarding the allegations of Paragraph 5 of the Complaint and basing its denial on that ground, denies each and every allegation of paragraph 5.

III.

VENUE

6. Defendant has no information or belief regarding the allegations of Paragraph 6 of the Complaint and basing its denial on that ground, denies each and every allegation of paragraph 6.

IV.

PARTIES

7. Defendant has no information or belief regarding the allegations of Paragraph 7 of the Complaint and basing its denial on that ground, denies each and every allegation of paragraph 7.

8. Defendant has no information or belief regarding the allegations of Paragraph 8 of the Complaint and basing its denial on that ground, denies each and every allegation of paragraph 8.

V.

FACTS

9. Defendant has no information or belief regarding the allegations of Paragraph 9 of the Complaint and basing its denial on that ground, denies each and every allegation of paragraph

1 9.

2 10. Defendant has no information or belief regarding the allegations of Paragraph 10 of
3 the Complaint and basing its denial on that ground, denies each and every allegation of paragraph
4 10.

5 11. Defendant has no information or belief regarding the allegations of Paragraph 11 of
6 the Complaint and basing its denial on that ground, denies each and every allegation of paragraph
7 11.

8 12. Defendant has no information or belief regarding the allegations of Paragraph 12 of
9 the Complaint and basing its denial on that ground, denies each and every allegation of paragraph
10 12.

11 13. Defendant has no information or belief regarding the allegations of Paragraph 13 of
12 the Complaint and basing its denial on that ground, denies each and every allegation of paragraph
13 13.

14 14. Defendant has no information or belief regarding the allegations of Paragraph 14 of
15 the Complaint and basing its denial on that ground, denies each and every allegation of paragraph
16 14.

17 15. Defendant has no information or belief regarding the allegations of Paragraph 15 of
18 the Complaint and basing its denial on that ground, denies each and every allegation of paragraph
19 15.

20 **VI. FIRST CLAIM**

21 **American with Disabilities Act of 1990)**

22 **Denial of "Full and Equal" Enjoyment and Use**

23 16. In answer to Paragraph 16 of the Complaint, Defendant realleges its responses to
24 Paragraphs 1 through 15 of the Complaint and incorporates them by reference as if set forth in full
25 herein.

26 17. Defendant has no information or belief regarding the allegations of Paragraph 17 of
27 the Complaint and basing its denial on that ground, denies each and every allegation of paragraph
28 17.

1 18. Defendant has no information or belief regarding the allegations of Paragraph 18 of
2 the Complaint and basing its denial on that ground, denies each and every allegation of paragraph
3 18.

4 Failure to Remove Architectural Barriers in Existing Facility

5 19. Defendant has no information or belief regarding the allegations of Paragraph 19 of
6 the Complaint and basing its denial on that ground, denies each and every allegation of paragraph
7 19.

8 20. Defendant has no information or belief regarding the allegations of Paragraph 20 of
9 the Complaint and basing its denial on that ground, denies each and every allegation of paragraph
10 20.

11 21. Defendant has no information or belief regarding the allegations of Paragraph 21 of
12 the Complaint and basing its denial on that ground, denies each and every allegation of paragraph
13 21.

14 22. Defendant has no information or belief regarding the allegations of Paragraph 22 of
15 the Complaint and basing its denial on that ground, denies each and every allegation of paragraph
16 22.

17 Failure to Design and Construct an Accessible Facility

18 23. Defendant has no information or belief regarding the allegations of Paragraph 23 of
19 the Complaint and basing its denial on that ground, denies each and every allegation of paragraph
20 23.

21 24. Defendant has no information or belief regarding the allegations of Paragraph 24 of
22 the Complaint and basing its denial on that ground, denies each and every allegation of paragraph
23 24.

24 25. Defendant has no information or belief regarding the allegations of Paragraph 25 of
25 the Complaint and basing its denial on that ground, denies each and every allegation of paragraph
26 25.

27 Failure to Make an Altered Facility Accessible

28 26. Defendant has no information or belief regarding the allegations of Paragraph 26 of

1 the Complaint and basing its denial on that ground, denies each and every allegation of paragraph
2 26.

3 27. Defendant has no information or belief regarding the allegations of Paragraph 27 of
4 the Complaint and basing its denial on that ground, denies each and every allegation of paragraph
5 27. 28. Defendant has no information or belief regarding the allegations of Paragraph 28 of
6 the Complaint and basing its denial on that ground, denies each and every allegation of paragraph
7 28.

8 Failure to Modify Existing Policies and Procedures

9 29. Defendant has no information or belief regarding the allegations of Paragraph 29 of
10 the Complaint and basing its denial on that ground, denies each and every allegation of paragraph
11 29.

12 30. Defendant has no information or belief regarding the allegations of Paragraph 30 of
13 the Complaint and basing its denial on that ground, denies each and every allegation of paragraph
14 30.

15 31. Defendant has no information or belief regarding the allegations of Paragraph 31 of
16 the Complaint and basing its denial on that ground, denies each and every allegation of paragraph
17 31.

18 32. Defendant has no information or belief regarding the allegations of Paragraph 32 of
19 the Complaint and basing its denial on that ground, denies each and every allegation of paragraph
20 32.

21 **VII. SECOND CLAIM**

22 **Disabled Persons Act**

23 33. In answer to Paragraph 33 of the Complaint, Defendant realleges its responses to the
24 allegations of Paragraphs 1 through 30 of the Complaint and incorporates them as if set forth in full
25 herein.

26 34. Defendant admits that Section 54 of the Cal. Civ. Code is quoted. Except as
27 specifically admitted, Defendant has no information or belief regarding the remaining allegations of
28 Paragraph 34 of the Complaint and basing its denial on that ground, denies each and every allegation

1 of paragraph 34.

2 35. Defendant admits that Section 54.1 of the Cal. Civ. Code is quoted. Except as
3 specifically admitted, Defendant has no information or belief regarding the remaining allegations of
4 Paragraph 35 of the Complaint and basing its denial on that ground, denies each and every allegation
5 of paragraph 35.

6 36. Defendant has no information or belief regarding the allegations of Paragraph 36 of
7 the Complaint and basing its denial on that ground, denies each and every allegation of paragraph
8 36.

9 37. Defendant has no information or belief regarding the allegations of Paragraph 37 of
10 the Complaint and basing its denial on that ground, denies each and every allegation of paragraph

11 37. 38. Defendant has no information or belief regarding the allegations of Paragraph 38 of
12 the Complaint and basing its denial on that ground, denies each and every allegation of paragraph

13 38. 39. Defendant has no information or belief regarding the allegations of Paragraph 39 of
14 the Complaint and basing its denial on that ground, denies each and every allegation of paragraph
15 39.

16 **VIII. THIRD CLAIM**

17 **Unruh Civil Rights Act**

18 40. In answer to Paragraph 40 of the Complaint, Defendant realleges its responses to the
19 allegations of Paragraphs 1 through 30 of the Complaint and incorporates them as if set forth in full
20 herein.

21 41. Defendant admits that Section 51 of the Cal. Civ. Code is quoted. Except as
22 specifically admitted, Defendant has no information or belief regarding the remaining allegations of
23 Paragraph 41 of the Complaint and basing its denial on that ground, denies each and every allegation
24 of paragraph 41.

25 42. Defendant admits that Section 51.5 of the Cal. Civ. Code is quoted. Except as
26 specifically admitted, Defendant has no information or belief regarding the remaining allegations of
27 Paragraph 42 of the Complaint and basing its denial on that ground, denies each and every allegation
28 of paragraph 42.

43. Defendant has no information or belief regarding the allegations of Paragraph 43 of the Complaint and basing its denial on that ground, denies each and every allegation of paragraph 43.

44. Defendant has no information or belief regarding the allegations of Paragraph 44 of the Complaint and basing its denial on that ground, denies each and every allegation of paragraph 44.

45. Defendant has no information or belief regarding the allegations of Paragraph 45 of the Complaint and basing its denial on that ground, denies each and every allegation of paragraph 45.

46. Defendant has no information or belief regarding the allegations of Paragraph 46 of the Complaint and basing its denial on that ground, denies each and every allegation of paragraph 46.

47. Defendant has no information or belief regarding the allegations of Paragraph 47 of the Complaint and basing its denial on that ground, denies each and every allegation of paragraph 47.

IX. FOURTH CLAIM

Denial of Full and Equal Access to Public Facilities

48. In answer to Paragraph 48 of the Complaint, Defendant realleges its responses to the allegations of Paragraphs 1 through 13 of the Complaint and incorporates them as if set forth in full herein.

49. Defendant admits that Section 19955(a) of the Health and Safety Code is quoted. Except as specifically admitted, Defendant has no information or belief regarding the remaining allegations of Paragraph 49 of the Complaint and basing its denial on that ground, denies each and every allegation of paragraph 49.

50. Defendant admits that Section 19959 of the Health and Safety Code is quoted. Except as specifically admitted, Defendant has no information or belief regarding the remaining allegations of Paragraph 50 of the Complaint and basing its denial on that ground, denies each and every allegation of paragraph 50.

51. Defendant has no information or belief regarding the allegations of Paragraph 51 of the Complaint and basing its denial on that ground, denies each and every allegation of paragraph

1 51. 52. Defendant has no information or belief regarding the allegations of Paragraph 52 of
2 the Complaint and basing its denial on that ground, denies each and every allegation of paragraph
3 52.

4 **AFFIRMATIVE DEFENSES**

5 **FIRST AFFIRMATIVE DEFENSE**

6 53. Defendant, for a separate and first affirmative defense alleges that Plaintiff has failed
7 to state a cause of action against Defendant upon which relief can be granted.

8 **SECOND AFFIRMATIVE DEFENSE**

9 54. Defendant, for a separate and second affirmative defense, is informed and believes
10 and thereon alleges that Plaintiff cannot state facts sufficient to constitute any cause of action against
11 it.

12 **THIRD AFFIRMATIVE DEFENSE**

13 55. Defendant, for a separate and third affirmative defense, is informed and believes and
14 thereon alleges that Plaintiff has waived some or all of the claims set forth in the Complaint.

15 **FOURTH AFFIRMATIVE DEFENSE**

16 56. Defendant, for a separate and fourth affirmative defense, is informed and believes and
17 thereon alleges that any damages alleged to have been sustained by Plaintiff were actually and
18 proximately caused by the actions of persons other than this Defendant.

19 **FIFTH AFFIRMATIVE DEFENSE**

20 57. Defendant, for a separate and fifth affirmative defense, is informed and believes and
21 thereon alleges that it is entitled to indemnity and contribution from those presently unknown
22 individuals or entities responsible for any alleged damages complained of by Plaintiff.

23 **SIXTH AFFIRMATIVE DEFENSE**

24 58. Defendant, for a separate and sixth affirmative defense, is informed and believes and
25 thereon alleges that Plaintiff, by his actions and inactions, is barred by laches from the pursuit of this
26 action.

27 **SEVENTH AFFIRMATIVE DEFENSE**

28 59. Defendant, for a separate and seventh affirmative defense, is informed and believes

1 and thereon alleges that Plaintiff has failed to state facts sufficient to constitute a cause of action or
2 a claim for compensatory damages or for punitive damages.

3 **EIGHTH AFFIRMATIVE DEFENSE**

4 60. Defendant, for a separate and eighth affirmative defense, is informed and believes and
5 thereon alleges that Defendant has acted at all times in good faith and without discrimination towards
6 Plaintiff.

7 **NINTH AFFIRMATIVE DEFENSE**

8 61. Defendant, for a separate and ninth affirmative defense, is informed and believes and
9 thereon alleges that Plaintiff's damages, if any, were directly and proximately caused by his own
10 negligence.

11 **TENTH AFFIRMATIVE DEFENSE**

12 62. Defendant, for a separate and tenth affirmative defense, is informed and believes and
13 thereon alleges that Plaintiff failed to take such action as was necessary, reasonable and proper in
14 this case, and failed to prevent or minimize his alleged damages, if any.

15 **ELEVENTH AFFIRMATIVE DEFENSE**

16 63. Defendant, for a separate and eleventh affirmative defense, is informed and believes
17 and thereon alleges that Plaintiff has failed to state facts or legal claims sufficient to form the basis
18 for an award of attorneys' fees in favor of Plaintiff.

19 **TWELFTH AFFIRMATIVE DEFENSE**

20 64. Defendant, for a separate and twelfth affirmative defense, is informed and believes
21 and thereon alleges that Plaintiff, through his own conduct, has failed to prevent or mitigate his
22 alleged damages, if any.

23 **THIRTEENTH AFFIRMATIVE DEFENSE**

24 65. Defendant, for a separate and thirteenth affirmative defense, is informed and believes
25 and thereon alleges that Plaintiff has sustained no loss or damages as a result of the conduct of the
26 Defendant.

27 **FOURTEENTH AFFIRMATIVE DEFENSE**

28 66. Defendant, for a separate and fourteenth affirmative defense, is informed and believes

1 and thereon alleges that the Complaint and each purported Cause of Action contained therein is
 2 barred because the damages, if any, were caused by an act of negligence, intentional conduct or
 3 omissions of third persons for whom Defendant bear no responsibility.

4 **FIFTEENTH AFFIRMATIVE DEFENSE**

5 67. Defendant, for a separate and fifteenth affirmative defense, is informed and believes
 6 and thereon alleges, that without admitting the allegations of the complaint, that if they are subjected
 7 to any liability to the Plaintiff herein, it will be due, in whole or in part, to the conduct and
 8 negligence and activities of other known and unknown persons; wherefore, any recovery obtained
 9 by the Plaintiff against this answering Defendant should be reduced according to the law of
 10 comparative liability.

11 **SIXTEENTH AFFIRMATIVE DEFENSE**

12 68. Defendant for a separate and sixteenth affirmative defense is informed and believes
 13 and thereon alleges that Plaintiff cannot state facts sufficient for a claim for negligence, including
 14 facts establishing a duty to Plaintiff.

15 **SEVENTEENTH AFFIRMATIVE DEFENSE**

16 69. Defendant, for a separate and seventeenth affirmative defense, is informed and
 17 believes and thereon alleges that Plaintiff's action is barred under the applicable statutes of
 18 limitations, including, but not limited to, California Code of Civil Procedure Sections 336, 336a,
 19 337, 337a, 337.1, 337.15, 337.2, 338, 339, 339.5, 340, 340.1, 340.2, 340.3, 340.5, 340.6, 3434, 346
 20 and 347.

21 **EIGHTEENTH AFFIRMATIVE DEFENSE**

22 70. Defendant, for a separate and eighteenth affirmative defense, is informed and believes
 23 and thereon alleges that Plaintiff is estopped to assert a claim because of his actions and inactions.

24 **NINETEENTH AFFIRMATIVE DEFENSE**

25 71. Defendant, for a separate and nineteenth affirmative defense, is informed and believes
 26 and thereon alleges that Plaintiff has unclean hands, and any recovery should be barred in that
 27 Plaintiff had access to the within establishments.

28 **TWENTIETH AFFIRMATIVE DEFENSE**

1 72. Defendants, for a separate and twentieth affirmative defense, are informed and believe
2 that installation for accessibility may not be readily achievable.

3 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

4 73. Defendants, for a separate and twenty-first affirmative defense, are informed and
5 believes that installation may be a hardship.

6 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

7 74. Defendants, for a separate and twenty-second affirmative defense, are informed and
8 believe that installation may fundamentally alter the nature of the goods, services, facilities and
9 accommodations of the business.

10 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

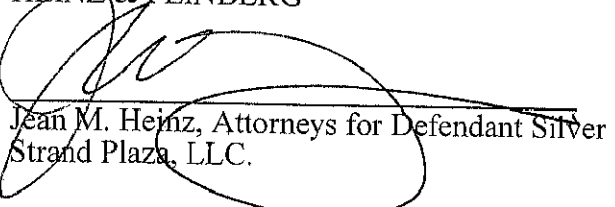
11 75. Defendant, for a separate and twenty-third affirmative defense, is informed and
12 believes and thereon alleges that they presently have insufficient knowledge or belief as to whether
13 they may have additional affirmative defenses available. Defendant reserve the right to assert any
14 additional defenses in the event that discovery indicates that it would be appropriate.

15 WHEREFORE, as to each and every cause of action, these answering Defendant demand
16 judgment against Plaintiff as follows:

- 17 1. That Plaintiff takes nothing by way of his complaint and the complaint be dismissed
18 against Defendant with prejudice;
- 19 2. For Defendant's costs incurred herein;
- 20 3. For Defendant's attorneys fees; and
- 21 4. For any further relief that the Court may deem necessary.

22 Dated: April 20, 2008

23 HEINZ & FEINBERG

24 
25 Jean M. Heinz, Attorneys for Defendant Silver
26 Strand Plaza, LLC.